

## PART IV: FAMILY ASSESSMENT AND INVESTIGATION

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## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

The Virginia Administrative Code 22VAC40-705-10 defines family assessment and investigation as follows:

**“Family assessment” means the collection of information necessary to determine:**

- a. The immediate safety needs of the child;**
- b. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;**
- c. Risk of future harm to the child; and**
- d. Alternative plans for the child’s safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.**

**"Investigation" means the collection of information to determine:**

- 1. The immediate safety needs of the child;**
- 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;**
- 3. Risk of future harm to the child;**
- 4. Alternative plans for the child’s safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;**
- 5. Whether or not abuse or neglect has occurred;**
- 6. If abuse or neglect has occurred, who abused or neglected the child; and**
- 7. A finding of either founded or unfounded based on the facts collected during the investigation.**

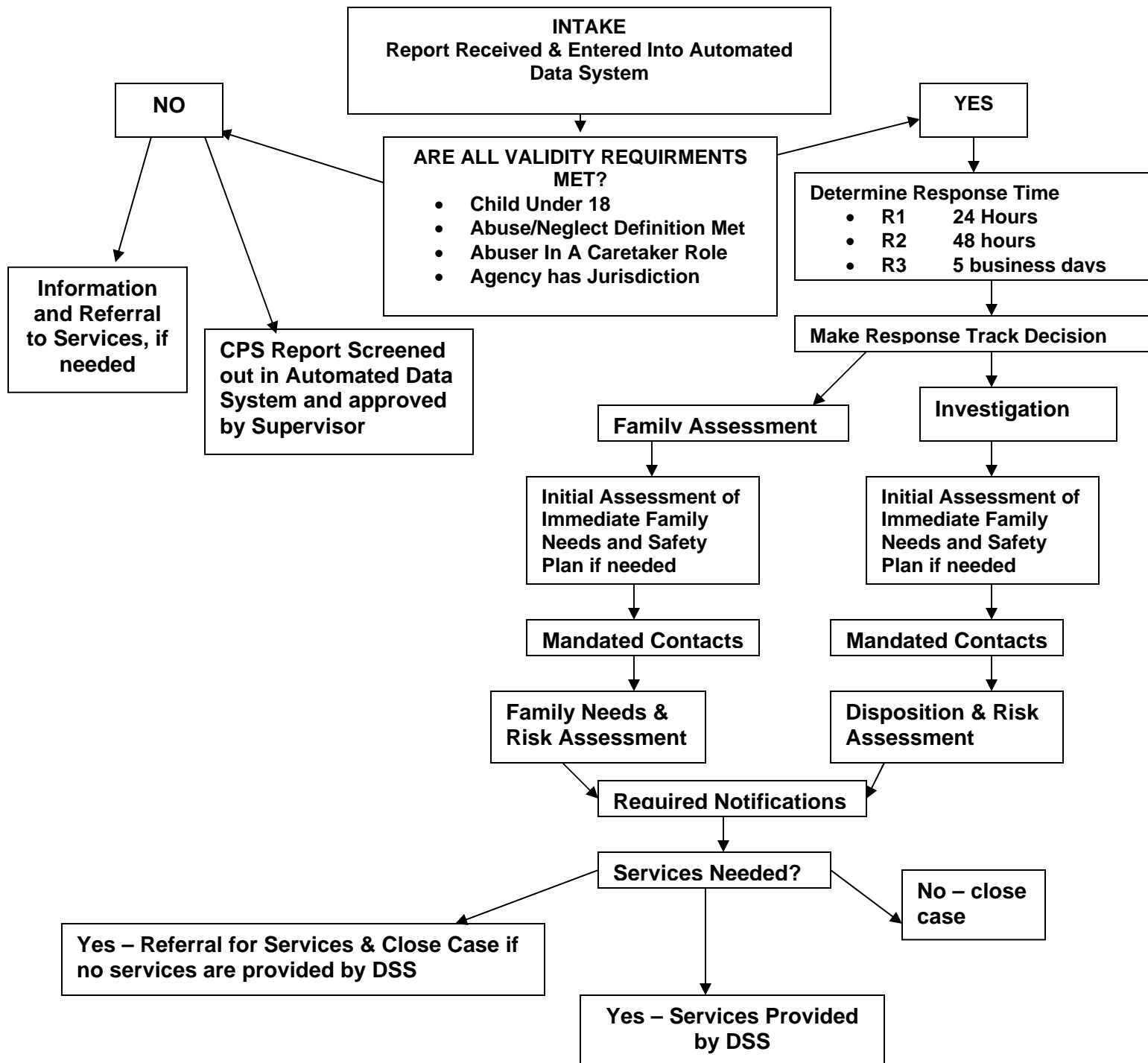
Every valid report of abuse or neglect must receive either a family assessment or an investigation. The goals of both responses are to:

- Assess child safety
- Strengthen and support families
- Prevent child maltreatment

The following charts show the CPS Process and Requirements for Family Assessment and Investigation.

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### CPS PROCESS CHART



## PART IV: FAMILY ASSESSMENT AND INVESTIGATION

### CPS REQUIREMENTS FOR FAMILY ASSESSMENT AND INVESTIGATION

CPS REQUIREMENTS	FAMILY ASSESSMENT	INVESTIGATION
Conduct Initial Safety Assessment	YES	YES
<u>Mandated contacts:</u> <ul style="list-style-type: none"> <li>• Child &amp; siblings</li> <li>• Alleged Abuser</li> <li>• Parent or Guardian</li> <li>• Collaterals</li> </ul>	YES	YES
<u>Other Contacts, if relevant:</u> <ul style="list-style-type: none"> <li>• Commonwealth attorney – if criminal act is alleged</li> <li>• Medical Examiner – if child fatality</li> <li>• Law Enforcement – if criminal act is alleged and joint response is needed</li> <li>• CPS Regional Specialist –child fatality or certain out of family reports</li> </ul>	YES	YES
Observe family environment and/or site where alleged abuse occurred.	YES	YES
Enter the home if allowed to do so by an adult residing in the home.	YES	YES
Notify: <ul style="list-style-type: none"> <li>• Parent if child interviewed at school or other setting;</li> <li>• Alleged abuser;</li> <li>• Non-custodial parent when that parent is not the subject of a report;</li> <li>• All parties of any extension of timeframe;</li> <li>• All parties when family assessment or investigation is completed;</li> </ul>	YES	YES
Refer children under age 3 to Infant and Toddler Connection Program	NO	YES in founded investigations,
Complete Family Needs Assessment including risk assessment within 45-60 days.	YES	NO
Complete Investigation Dispositional Assessment and individual child risk assessment(s) within 45-60 days	NO	YES
Provide Services if risk is moderate or high and services are needed for prevention of abuse or neglect.	YES	YES
Document all CPS requirements in automated data system.	YES	YES

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **A. Authorities**

The *Code of Virginia* grants CPS workers the authority to conduct family assessments and investigations in response to a valid report of suspected child abuse or neglect. Generally, the power to enforce the worker's authority lies with the courts. For example, if an individual refuses to allow the worker to conduct the family assessment or refuses to talk to the worker, the worker may file a petition requesting that the court require the individual to cooperate. An individual's refusal to cooperate does not relieve the local department of the responsibility to complete the family assessment or investigation because it has been initiated due to a valid report of abuse or neglect. These authorities are applicable only during the conduct of the family assessment or investigation

#### **1.0 Authority to Interview the Child**

**22VAC40-705-60(1). [When responding to valid complaints or reports local departments have the following authority] To talk to any child suspected of being abused and/or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § [63.2-1518](#) of the Code of Virginia.**

If the CPS worker talks to the child without the parent's or guardian's prior knowledge, the CPS worker must notify the parent or guardian concerning the interview as soon as possible.

##### **1.1 Parent or Guardian Refuses to Allow Child to be Interviewed**

The worker may consult with local county/city attorney to determine whether to petition the court to request access to the child if denied access.

##### **1.2 CPS Worker May Exclude School Personnel From Interview**

If the CPS worker interviews the child at school, the worker may exclude school personnel from the interview in order to protect the family's right to privacy.

#### **2.0 Authority to Take or Arrange for X-Rays and Photographs of the Alleged Victim Child**

**22VAC40-705-60(2). [When responding to valid complaints or reports local departments have the following authority] To take or arrange for photographs and x-rays of a child who is the subject of a complaint**



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**without the consent of and outside the presence of the parent or other caretaker, as set forth in § [63.2-1520](#) of the Code of Virginia.**

Photographs may be taken as part of an investigation or family assessment to document the nature and extent of injuries to the child. These photographs cannot be used in lieu of a medical examination.

X-rays of a child may be taken without the consent of the parent or guardian as part of a medical evaluation related to a CPS family assessment or investigation. All photographs or x-rays taken in accordance with the *Code of Virginia* § [63.2-1520](#) may be introduced into evidence in any subsequent court hearing. The court can impose any restrictions concerning the confidentiality of the photographs or x-rays.

### **2.1 Local Department May Seek Complete Medical Examination of the Child**

**22VAC40-705-60(3)(d). The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § [63.2-1520](#) of the Code of Virginia.**

The *Code of Virginia* § [63.2-1524](#) grants authority to the court to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's parents, guardians, caretakers or siblings. If the alleged victim child's parent, caretaker or other legal guardian refuses permission to have a complete medical examination of the child, the local department may consult with the county/city attorney to determine whether to seek a court ordered examination of the child.

### **2.2 Photographs of the Child's Environment**

The CPS worker must obtain verbal or written consent from the parent or guardian of the child prior to taking any photographs of the child's environment. Without the consent of parents or guardians, any photographs should only be taken under the direction and supervision of the Commonwealth's Attorney, or the city or county attorney for the local department.

Photographs may be taken to clarify statements made by witnesses, to document the circumstances surrounding the alleged abuse or neglect, to

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depict the environment where the alleged abuse or neglect occurred, and for any other legitimate purpose.<sup>1</sup>

### 3.0 Authority to Remove a Child

The *Code of Virginia* § [63.2-1517](#) provides that a child may be taken into emergency custody when the circumstances present an imminent danger to the child's life or health to the extent that severe or irremediable injury would likely result before a hearing could be held and a court order was not immediately obtainable. The *Code of Virginia* § [63.2-1517](#) also allows a physician, a child protective services workers or a law-enforcement officer to assume custody of a child when the evidence of the abuse is perishable or subject to deterioration before a court hearing can be held.<sup>2</sup>

**22VAC40-705-60(3). [When responding to valid complaints or reports local departments have the following authorities:] To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth in § [63.2-1517](#) of the Code of Virginia.**

### 3.1 Persons Who May Take a Child Into Custody

The following persons may take a child into custody for 72-96 hours without prior approval of the child's parents or guardian:

- a. A physician,
- b. A child protective service worker, or
- c. A law enforcement officer when he is investigating a complaint of child abuse or neglect.

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<sup>1</sup> *Campbell v. Commonwealth*, 405 S.E.2d 1 (Va. Ct. App. 1991) (“A picture can speak a thousand words, and these do.”); *Diehl v. Commonwealth*, 9 Va. App. 191, 385 S.E.2d 228, (1989); *Kelly v. Commonwealth*, 8 Va. App 359, 382 S.E.2d 270 (1989).

<sup>2</sup> Prior to the 1998 General Assembly, § 63.2-1517 of the Virginia Code specified certain circumstances that must exist for a child to be taken into custody by a physician, a child protective services worker or law-enforcement officer. The 1998 General Assembly amended § 63.2-1517 of the Virginia Code by incorporating language allowing a physician, a child protective services workers or a law-enforcement officer to assume custody of a child when the evidence of the abuse is perishable or subject to deterioration before a court hearing can be held.

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### **3.2 Mandatory Consultation With Supervisor Prior to Removing Child**

**22VAC40-705-60(3)(a).** A child protective services (CPS) worker planning to take a child into 72-96 hours emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the CPS worker's part if a supervisor cannot be contacted and the situation requires immediate action.

### **3.3 Immunity From Liability**

**22VAC40-705-60(3)(c).** Any person who takes a child into custody pursuant to § [63.2-1517](#) of the Code of Virginia, shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

### **3.4 Emergency Removal Requirements**

**These requirements apply to emergency removal of a child during a CPS family assessment or investigation. Local departments may consult with the county/city attorney to ensure these removals are conducted according to the *Code of Virginia*.**

#### **3.4.1 Exigent Circumstances Exist**

The *Code of Virginia* § [63.2-1517](#), requires that exigent circumstances exist for emergency removal of a child from the custody of his parent or guardian.

“Exigent circumstances” means a situation that demands immediate action. The following circumstances must exist to remove a child without prior approval of the parent or guardian:

- a. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for his care, presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result before a hearing can be held; and

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- b. A court order is not immediately obtainable; and
- c. The court has set up procedures for placing children taken into immediate custody.

### **3.4.2 Notifications and Written Reports if Child is Taken Into Emergency Custody by CPS**

If a child is taken into emergency custody pursuant to the *Code of Virginia* § [63.2-1517](#), the social worker, physician, or law enforcement officer must:

- a. Notify the child's parents or guardians as soon as possible that the child is in custody; and
- b. Make a written report to the local department; and
- c. Notify the court as soon as possible but in no event more than 72-96 hours the child is in custody depending on the court's availability.
- d. File the petition for an emergency removal order within four hours of taking custody of the child, or state the reasons for not filing within four hours in the affidavit or sworn testimony.

### **3.4.3 Information to be Obtained When Child is Taken Into Emergency Custody by CPS**

The local department must obtain as much of the following information as possible for purposes of filing a petition:

- a. The name of the person who assumed emergency custody, his/her professional capacity and the telephone number where he/she can be reached;
- b. The child's name and birth date;
- c. Names of parents or guardians;
- d. Present or last known address of parents or guardians;

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- e. Description of the child's condition in as much detail as possible;
- f. Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint;
- g. The specific time and date emergency custody was taken; and
- h. Reason(s) why services to prevent the need for removal were not successful or could not be delivered.

### **3.5 Placement Requirements When CPS Has Assumed Emergency Custody of the Child**

The local department must ensure that the child is placed in an appropriate emergency, temporary, or permanent setting which will assure the child's safety. If the child is placed in an agency approved placement, the CPS worker should consult with the agency's foster care or foster home staff.

The following procedures must be followed prior to placing the child.

#### **a. Supervisory Consultation to Determine Placement**

The child's safety is the primary consideration in deciding whether to place the child on an emergency basis with a relative, neighbor or friend. The CPS worker in consultation with a supervisor makes a decision to place the child in the home of a relative, neighbor or friend that is not an agency approved provider. The decision is based on the child's best interest and the appropriate local agency procedures are followed to make the placement.

#### **b.. Required Background Checks on Individuals with Whom an Agency May Place a Child on an Emergency Basis**

*If the CPS worker is considering a placement with a person that is not an agency approved provider, the Code of Virginia § [63.2-901B](#) requires CPS central registry checks and a written statement of affirmation disclosing any child abuse and neglect history in Virginia and any other state of residence. The CPS*

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*worker, in consultation with a supervisor, shall evaluate and document in the automated data system the results of the CPS central registry searches on every adult household member with whom the agency is considering placing the child.*

*The sworn disclosure statement is available in the appendix at:  
<http://spark.dss.virginia.gov/divisions/dfs/background.cgi>*

~~The Code of Virginia § 63.2-901B requires criminal history and CPS central registry checks, if the CPS worker is considering a placement with a person that is not an agency approved provider.~~

~~The CPS worker, in consultation with a supervisor, shall evaluate and document in the state automated data system results of the criminal background and CPS central registry searches on every adult household member with whom the agency is considering placing the child.~~

The worker and supervisor may refer to Division of Family Services Generic Guidance, Chapter I, Standards and Regulations for Agency-Approved Providers

[http://localagency.dss.virginia.gov/divisions/dfs/genericpolicy\\_chapter\\_i.pdf](http://localagency.dss.virginia.gov/divisions/dfs/genericpolicy_chapter_i.pdf) for guidance on whether the criminal information prohibits placement of the child.

~~If either the central registry search or the criminal background check cannot be completed, the local worker must get a sworn statement from each adult in the home that indicates whether or not any criminal record exists and, if so, the nature of the record.~~

It is the CPS worker's responsibility to complete both the central registry search and state police criminal background check as soon as possible.

### **c. Post Emergency Placement Procedures**

The Code of Virginia § [63.2-901.1](#) establishes additional searches or procedures are required if the child is to remain in the emergency non agency approved placement for more than three days. CPS workers should consult with agency foster care or foster home staff to ensure these requirements are met if the child is to remain in the emergency placement

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for longer than three days. The worker may refer to <http://spark.dss.virginia.gov/divisions/dfs/background.cgi> for additional information regarding criminal background checks.

### **3.6 Authority to Obtain Immediate Medical or Surgical Treatment for Child**

The Virginia Administrative Code explains the *Code of Virginia* § [54.1-2969](#) granting this authority.

**22VAC40-705-60(3)(e). When a child in 72-96 hour custody is in need of immediate medical or surgical treatment, the local director of social services or his designee(s) may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.**

When a local department has assumed custody of a child and that child is in need of immediate medical or surgical treatment, the local department must take the following actions as listed below:

- a. If a child is in need of immediate medical treatment and the parent is unwilling or unable to consent, the local department should first attempt to obtain a court order for treatment.
- b. If a court order is not immediately obtainable, authority to consent to surgical or medical treatment, tantamount with that of a parent, is confirmed upon the local director of the local department, or that person's designee.

#### **3.6.1 Local Director May Designate Certain Persons to Provide Consent**

The local director may designate no more than two persons to act on his or her behalf in authorizing surgical or medical treatment. Those persons must be chosen from:

- (1) Assistant director;
- (2) Casework supervisor;
- (3) Senior social worker; or
- (4) Social worker.

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### **3.6.2 Parents or Guardians of Child Must be Notified as Soon as Practicable**

Any authorized person who consents to emergency surgical or medical treatment of a child must make every reasonable effort to notify the child's parent or guardian as soon as practicable.

### **3.6.3 Establish Protocol With Local Hospitals for Obtaining Consent**

Each local department should establish protocol with local hospitals for obtaining consent when surgical and medical treatment is necessary for a child under emergency custody. This agreement should include:

- a. A list of persons who may sign the consent form;
- b. A statement that the parents or guardians of the child refuse to give consent or are unavailable to give consent;
- c. A statement that a court order for such treatment is not immediately obtainable;
- d. A statement from the attending physician as to what treatment is necessary.

### **3.6.4 Payment for Surgical and Medical Treatment**

The local department should attempt to obtain payment for surgical or medical treatment from the child's parents, or the child's legal guardians if appropriate. If the parents or legal guardians are unable to pay for the treatment, the local department shall explore the possibility that the child may be eligible for Medicaid, Medicare or other funding.

### **3.6.5 Local Department Cannot Provide Consent if Child is Not in Custody**

**22VAC40-705-60(3)(f). When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.**



## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **B. Related Responsibilities To Conduct Family Assessment and Investigation**

#### **1.0 CPS Worker May Enter the Home**

**22VAC40-705-90(A).** In conducting a family assessment or an investigation, the child protective services (CPS) worker may enter the home if permitted to enter by an adult person who resides in the home. Only in those instances where the CPS worker has probable cause to believe that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law enforcement officer, may a CPS worker enter the home without permission. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for the decision to enter the house without permission.

##### **1.1 Entering the Home**

When conducting a family assessment or an investigation, the CPS worker should explain the purpose of the visit and enter the home when allowed to do so by an adult who resides in the home.

##### **1.2 CPS Worker May Enter Home Without Permission if There is Probable Cause to Believe Exigent Circumstances Exist**

The worker cannot enter the home without permission unless there is probable cause to believe that the circumstances are such that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a police officer.

The assistance of a police officer does not, in and of itself, provide the authority for a social worker to enter the home without permission. There must be probable cause to believe that "exigent circumstances" exist.

"Probable cause" means the reasonable belief in the existence of facts on which the complaint is based.<sup>3</sup> "Exigent circumstances" means situations that demand unusual or immediate action. They are emergency-like circumstances in which the social worker must act immediately to protect the safety of a child or preserve the evidence in an investigation.<sup>4</sup>

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<sup>3</sup> Black's Law Dictionary 1239 (8<sup>th</sup> ed. 2004).

<sup>4</sup> Black's Law Dictionary 260 (8<sup>th</sup> ed. 2004)).

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **1.3 CPS Worker Must Consult with Supervisor and Document Decision to Enter a Home Without Permission**

If the circumstances are such that the CPS worker must enter the home without permission of an adult residing in the home, the CPS worker must record in the automated data system the reason for this action. The CPS worker must consult with a supervisor to make this decision.

### **1.4 Adult Residing in Home Refuses to Allow CPS Worker to Enter a Home**

If a person residing in the home refuses to allow the CPS worker into the home and there are no exigent circumstances demanding that the CPS worker act immediately, the CPS worker must consider alternate plans such as seeking court assistance to gain access to the home. The CPS worker may consult with county/city attorney to determine if court intervention is appropriate. For a further discussion of alternatives to entering the home when permission is denied, see Appendix.

#### **1.4.1 Exception: Conducting Joint Investigation with Law-Enforcement**

If, during a joint investigation, a law-enforcement officer or the Commonwealth's Attorney Office objects to the CPS worker informing the person of his right to refuse entry, the local department should consider that objection as an exception to 22VAC40-705-90(A).

The objection is only valid during a joint investigation with law-enforcement when the investigation involves criminal charges. The objection must be premised upon not compromising the criminal investigation. The CPS worker must document the objection in the automated data system.

## **2.0 Transport Children**

**22VAC40-705-90(C).** The child protective services worker may transport a child without parental consent only when the local department has assumed custody of that child by virtue of 72-96 hour removal authority pursuant to § [63.2-1517](#) of the Code of Virginia, by an emergency removal court order pursuant to § [16.1-251](#) of the Code of Virginia, or by a preliminary removal order pursuant to § [16.1-252](#) of the Code of Virginia.

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### **3.0 CPS Worker May Request Alleged Abuser or Neglector to Consent To Substance Abuse Screening**

**22VAC40-705-90(D).** When a child protective services worker has reason to believe that the caretaker in a valid report of child abuse or neglect is abusing substances and such behavior may be related to the matter being investigated or assessed, the worker may request that person to consent to substance abuse screening or may petition the court to order such screening.

#### **3.1 Local Departments Must Develop Substance Abuse Guidelines**

**22VAC40-705-90(D)(1).** Local departments must develop guidelines for such screening.

**22VAC40-705-90(D)(2).** Guidelines may include child protective services worker administration of urine screening.

The local department should seek the assistance of the Commonwealth's Attorney Office, the local city or county attorney, or the court to develop these guidelines.

### **4.0 Reasonable Diligence**

The *Code of Virginia* § [63.2-1503\(F\)](#) mandates local departments to use reasonable diligence in locating the subjects of a report or complaint of abuse or neglect.

**22 VAC 40-705-50(H)(3).** The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and determined valid or persons who are the subject of a valid report if the whereabouts of such persons are unknown to the local department, pursuant to § [63.2-1503\(F\)](#) of the Code of Virginia.

#### **4.1 Document Use of Reasonable Diligence in Locating Child and Family**

**22 VAC 40-50(H)(4).** The local department shall document its attempts to locate the child and family.

The local department must document in the automated information system all attempts to locate the alleged victim child and the family.

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **4.2 Use of Reasonable Diligence in Locating Alleged Victim Child**

The *Code of Virginia* § [63.2-1503\(F\)](#) requires local departments to use reasonable diligence to locate children for whom a report of suspected child abuse and/or neglect has been received and is receiving a family assessment or investigation.

### **4.3 Reasonable Diligence Must be Used to Locate Subjects of the Family Assessment or Investigation**

Reasonable diligence must also be used by local departments to locate persons who are the subject of a child protective services (CPS) family assessment or investigation, if the whereabouts of such persons are unknown to the local department.

### **4.4 Subjects of the Family Assessment or Investigation**

The subjects of the family assessment or investigation include:

- a. Any child for whom a report of suspected abuse or neglect has been received and is under investigation;
- b. Persons named as the alleged abuser and/or neglecter of a report that is under investigation.

### **4.5 What Constitutes Reasonable Diligence**

**The local department shall document reasonable and prompt attempts to locate the child and family including checking the following, when applicable:**

- a. **CPS Automated Data System**
- b. **Postal Service for last known address**
- c. **Postal Service for forwarding address**
- d. **Neighbors, landlords, known relatives**
- e. **School records**
- f. **Department of Motor Vehicles**
- g. **Department's Division of Support Enforcement**
- h. **Department of Corrections, Probation and Parole**
- i. **Law Enforcement**
- j. **Telephone and utility companies**
- k. **Employer**
- l. **Other appropriate contacts**

The local department must document in the automated information system all attempts to locate the child and family and the results of the attempts.

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **4.6 When the Alleged Victim Child is Not Found**

**22 VAC 40-705-50(H)(5).** In the event the alleged victim child or children cannot be found, the time the child cannot be found shall not be computed as part of the 45-60 day time frame to complete the investigation, pursuant to subdivision 5 of § [63.2-1505\(B5\)](#) of the Code of Virginia.

When the alleged victim child cannot be located, despite the local department's efforts, the 45-60 day time frame for completing the investigation or family assessment will be suspended. The local department must document the suspension in the automated data system and the reasoning for the suspension.

### **4.7 Local Department Must Notify Automated Data System**

When the alleged victim child is not located, the local department must notify the automated data system that the family assessment or investigation is suspended and pending.

### **4.8 Local Department Must Continue Periodic Checks for Missing Child**

If the alleged victim child is not found, the local department must establish a timetable for making periodic checks for the missing child. The local department shall document the timetable in the case record and the results of the periodic checks. Periodic checks for the missing child must continue until the local department is satisfied with the resolution of the referral. The local department must notify the automated data system and document in the record the resolution of the referral.

### **4.9 If Missing Child is Found**

If a family assessment or an investigation was suspended and the missing child is subsequently located, the local department must resume the assessment or investigation of the original complaint or report and update the automated data system. Upon locating the missing child, a new 45-day time frame will commence.

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **C. Time Frames to Complete Family Assessments and Investigations**

#### **1.0 Complete Family Assessment and Investigation in 45 Calendar Days**

The *Code of Virginia* § [63.2-1506\(B\)3](#) requires the local department complete and document the family assessment and investigation within 45 calendar days of receipt of the complaint or report.

#### **2.0 15 Day Extension to Complete Family Assessment and Investigation**

**22VAC40-705-120(A).** The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to §[63.2-1506\(B\)3](#) or subdivision 5 of § [63.2-1505](#) of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

Upon written justification by the local department, based on locally determined guidelines, the family assessment or investigation can be extended for 15 calendar days.

The notification to the alleged abuser/neglector should include a brief explanation of the reason for the extension. If written notification is made, a copy of the notification must be included in the local department's record. If notification is made verbally, then the local department must document the notification in the automated data system. The local department must document the justification in the automated data system for the additional time needed to complete the family assessment or investigation.

### **D. Notify Family of Family Assessment or Investigation**

The Virginia Administration Code 22VAC40-705-90(B) requires the CPS worker to explain the CPS Family Assessment or Investigation process to the alleged abuser or neglector.

**22VAC40-705-90(B).** Before conducting a family assessment or investigation, the child protective services worker shall explain the responsibilities and authorities of CPS so that the parent or other caretaker can be made aware of the possible benefits and consequences of completing the family assessment or investigation. The explanation must be provided orally and in writing.

The CPS worker must notify the family in writing and orally that a report of suspected abuse or neglect has been received and that a family assessment or an investigation will be

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conducted in response to the report. The written notification is one of the following brochures:

- “Child Protective Services: A Guide to Family Assessment”
- “Child Protective Services: A Guide to Investigative Procedures”

### **1.0 Notify Non-Custodial Parent**

Pursuant to § [63.2-1503\(O\)](#) of the *Code of Virginia*, the local department shall make reasonable efforts to notify the non-custodial parent when that parent is not the subject of the child abuse or neglect report. Not only does the non custodial parent have a right to know about the report involving his/her child, that parent may be a resource to the child. However, if there is reason to believe that such notification would be detrimental to the child, the local department may take that concern into account. The response to the report should not be delayed if the non-custodial parent is unreasonably difficult to contact.

### **E. Conduct Initial Safety Assessment & Develop Safety Plan in Family Assessment and Investigation**

**22VAC40-705-110(A). In both family assessments and investigations the child protective services worker shall conduct an initial assessment of the child’s circumstances and threat of danger or harm, and where appropriate shall make a safety plan to provide for the protection of the child.**

An initial safety assessment is conducted at the beginning of a family assessment or investigation. The purpose of the initial safety assessment and safety plan is to:

- Assess whether any children are currently in *immediate* danger of serious physical harm that may require a protecting intervention; and
- To determine what interventions should be maintained or initiated to provide appropriate protection.

Safety Assessments differ from Risk Assessments in that the purpose is to assess a child’s present or immediate danger and the interventions currently needed to protect the child. In contrast, Risk Assessment evaluates the likelihood of future maltreatment.

### **1.0 Immediate Child Safety and Family Needs**

Safety must be determined for each child and the safety conclusion based on the least safe child if there is more than one child in the family. To ensure that the safety of the child is appropriately assessed, the local department must complete an initial safety assessment at

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the first meaningful contact with the family and document the results in the automated data system.

The safety assessment provides structured information concerning the danger of immediate harm or maltreatment to a child. This information guides the decision about whether the child may remain in the home with no intervention, may remain in the home with safety interventions in place, or must be removed from the home.

There is a Safety Assessment Checklist in the Appendix that can be used to evaluate safety factors as well as protective factors that are to be considered along with the elements that underlie child safety, including THREAT, HARM, SEVERITY, VULNERABILITY, AND IMMINENCE. These elements provide a context for the safety factors.

For example, a 3 year old child may be more vulnerable and more threatened with severe harm by an out of control parent than a 13 year old, but even the 3 year old may be deemed safe if the parent has just been taken away by the police and a responsible adult is available – so there is no severe nor imminent threat of harm to the vulnerable child .

Assessing child safety is an ongoing process throughout the life of the CPS referral and ongoing case. It can and should be reassessed any time there is a change in the family situation. The initial safety assessment must be documented in the automated data system. Additional safety information or safety reassessments should be documented in the automated data system.

### **1.1 Assess Immediate Danger to the Child**

The initial safety assessment focuses on the child and the child's immediate needs. Factors to consider when assessing the immediate situation of the child include:

- a. Whether the child has sustained a mental or physical injury warranting immediate attention or care;
- b. Whether an emergency or crisis situation exists meriting immediate action to protect the child;
- c. Whether the child is at risk of serious abuse or neglect in the near future.



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### **1.2 Assess Immediate Needs of the Family**

After assessing the immediate safety needs of the child, the worker must evaluate the immediate needs of the family. Factors to consider include:

- a. If the child has been injured or harmed, whether the family has the capabilities or capacity to protect the child from further harm;
- b. Whether an emergency or crisis situation exists and the family's ability to cope;
- c. Whether any other family members are at risk of harm or danger;
- d. What are the family's capabilities to ensure the safety of the child or children in the near future.

### **1.3 Domestic Violence and Substance Abuse as Safety and/or Risk Assessment Issues**

Two family issues that can have a major impact on safety and risk are domestic violence and drug and/or alcohol involvement by the child's caretakers.

Local departments are required to develop guidelines for evaluating substance or drug abuse. The CAGEAID tool is one tool that provides questions that can be worked into the interviews with the primary caretakers, and a "yes" to any question may indicate a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment. A copy of this tool is in the Appendix.

The Domestic Violence INITIAL ASSESSMENT tool could be given to the caretaker to complete or the questions may be asked by the CPS worker. A "yes" answer to these questions may mean the CPS worker should make a referral to a community domestic violence service provider for a more complete assessment of need. A copy of this tool is in the Appendix.

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### **2.0 Make Safety Decision**

After safety and protective factors have been assessed, the CPS worker must make a decision about the safety of the child(ren) in the home. The safety decision should be made on the basis of the needs of the least safe child in the home, if there is more than one child. One of the following safety decisions must be determined and documented in the automated data system and shared with the family.

A. SAFE: There are no children likely to be in immediate danger of moderate to serious harm at this time. No safety plan is required.

B. CONDITIONALLY SAFE: Safety interventions are in place and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.

C. UNSAFE: Without controlling intervention(s) a child is in immediate danger of serious harm. A court order or safety plan is required to document intervention.

### **3.0 Develop Safety Plan**

When the child is determined to be Conditionally Safe or Unsafe, the CPS worker must determine what services or actions need to occur by developing a safety plan. The Virginia Administrative Code 22VAC40-705-10 defines safety plan:

**"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.**

A safety plan must be made to ensure the immediate protection of the child. When possible, the worker needs to develop the safety plan with the cooperation of the child's parent(s) or guardian(s). The CPS worker must determine what actions are necessary to assure the child's immediate safety. If the actions needed to assure the safety of the child cannot be put in place, alternative steps must be taken that can include court intervention. The safety plan and the CPS worker's efforts to develop the safety plan with the family must be documented in the record. A copy of the safety plan shall be left with the caretaker of the child and/or the alleged abuser. A Safety Plan format is located in the Appendix.

Whenever possible the caretaker(s) should sign the safety plan along with the worker, so that this document can be used as an agreement as to who will do what to prevent harm to the children in the immediate future. Other parties to the agreement, such as service providers, may also sign the form.

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **F. Conduct Family Assessment**

**22VAC40-705-70(B). When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.**

The family assessment is a process of gathering and evaluating information and formulating conclusions regarding family functioning specific to child abuse/neglect, the presenting complaint allegations, and family needs related to child safety and risk of future abuse or neglect.

The family assessment is a child centered, family focused, participatory process that is done with the family. The family assessment builds on family strengths. It identifies parental capacities and resources within the nuclear and extended family and the community. The process is designed to incorporate parent/caretaker perceptions of child safety, address the presenting complaint, and determine service needs related to potential maltreatment of the child. The family assessment can and should include the active involvement of all members of the family and significant others in the extended family or community, as appropriate.

#### **1.0 Mandated Contacts for Family Assessments**

**22VAC40-705-80(A)1-3 During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.**

- 1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child and siblings.**
- 2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.**
- 3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.**

When it is possible and practical and places no family member in danger, contacts in a family assessment or investigation may be made with the family members together. However, the individual requirements for each contact should be documented in the automated data system.

## **PART IV: FAMILY ASSESSMENT AND INVESTIGATION**

### **1.1 Face-to-Face Interview with the Alleged Victim Child**

The CPS worker must conduct a face-to-face interview with the alleged victim child. During the interview, the CPS worker should inform the child what will occur during the assessment process. The CPS worker should observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning. The CPS worker must document all interviews and attempted interviews in the automated data system.

### **1.2 Face-to-Face Interview with Siblings**

The CPS worker shall interview or observe siblings of the alleged victim child in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

### **1.3 Interview of Non-Verbal Child**

In the case of an interview conducted with a non-verbal child, a child protective services worker shall document in detail in the automated data system the observations of the child interacting with his/her family members and environment.

### **1.4 Interview with Alleged Abuser or Neglector**

**22VAC40-705-80(A)(2). The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.**

The CPS worker must conduct a face-to-face interview with the alleged abuser or neglector. The alleged abuser or neglector must be informed of the allegations and the assessment process. The CPS worker must document the alleged abuser's or neglector's responses and knowledge about the allegations.

For the purposes of risk assessment and service planning, the CPS worker should identify the alleged abuser's or neglector's needs and capabilities. If the alleged abuser or neglector refuses to be interviewed, the CPS worker must inform the alleged abuser or neglector that the family assessment must be completed to ensure child safety.

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### **1.5 The Family Interview**

When it is possible, practical and places no family member in danger, the Family Assessment contacts may be made with the family members together. This type of interview allows the CPS worker to observe interaction among family members that may contribute to the family needs assessment. When a family interview is conducted, the CPS worker must document each of the individual required contacts in the automated data system.

### **1.6 Observe Family Environment**

**22VAC40-705-80(A)(3). The child protective services worker shall observe the family environment...**

The CPS worker must observe the family environment and determine the effect of the environment on the child's safety and the overall family needs related to caring for the children.

### **1.7 Interview Collaterals**

**22VAC40-705-80(A)(3)[continued]. The child protective services worker shall... contact pertinent collaterals, and review pertinent records in consultation with the family.**

As part of the family assessment, the CPS worker may need to contact collaterals to evaluate the circumstances of the alleged abuse or neglect and the needs of the family. The Virginia Administrative Code defines collateral.

**22VAC40-705-10: "Collateral" means person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.**

The CPS worker must contact any collaterals perceived to have pertinent information. The CPS worker may involve collaterals to help ensure the safety of the child. Contact with the child's other caretakers, such as babysitters or day care providers, is encouraged. The CPS worker may make collateral contacts without the family's consent in order to complete a child protective services family assessment, but consent and collaboration with the family is encouraged. The family assessment should be developed mutually with the family to the degree possible.

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*The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.*

### **1.8 Other Contacts May Be Required**

The CPS worker must contact the local Commonwealth Attorney and law enforcement to report suspected criminal activity.

### **2.0 First Meaningful Contact**

The CPS worker must document the contacts required by regulation in the automated data system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the automated data system.

*The first meaningful contact in the family assessment provides pertinent information relevant to the family assessment and the safety of the child and is usually a face-to-face interview with the victim. There could be circumstances in a family assessment where the first meaning contact is with the alleged abuser or collateral. A first meaningful contact could be by telephone.*

The first meaningful contact must be documented as such in the automated data system. The CPS worker should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. ~~after the referral has been validated because response times will be calculated from this designation.~~

### **3.0 Information to be Included in Family Assessment**

In developing the case record and the family assessment narrative, the CPS worker must address and document in the automated data system these issues. Each family assessment may have circumstances warranting more or less details and information.

The examples listed under each factor can be used as a guide for the CPS worker to elicit relevant information and identify family needs, strengths, and supports. See Appendix for an example of a Family Needs Assessment form. A comprehensive family assessment

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should address the family's strengths and needs in four areas, including but not limited to the issues listed:

- Children: age and ability to self-protect; presence of any disability or developmental delay; temperament; responsiveness to caretaker(s); prior history of abuse/neglect.
- Parent/caretaker: physical, emotional, and intellectual status; prior history of abuse/neglect; potential for violence; substance abuse or dependency; domestic violence; neglectful acts or omissions, allegations of abuse/neglect.
- Environment: any hazardous living conditions or positive factors present in the environment.
- Support Systems: informal and formal; available or needed; past and present resource utilization.
- The Family Assessment Summary must include the family members' perceptions of the situation, needs and ability to meet those needs or accept services to meet them. It also includes an assessment of the likelihood (risk) of future abuse or neglect.

There are tools in the Appendix that may assist CPS workers in evaluating the impact of possible substance abuse or domestic violence.

The Family Assessment must be documented in the automated data system. It must include the rationale for the family risk decision and any identified service needs of the family to reduce or prevent child abuse or neglect.

There is a sample Family Service Agreement in the Appendix that can be used to document service needs with the family. As with the Safety Plan, development of an agreement for services should occur mutually with the family to the degree possible, and they should receive a copy of the agreement.

### **4.0 Reassign Family Assessment to Investigation as a Result of an Emergency Removal**

**22VAC40-705-60(3b). When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately to an investigation.**

At any time before the completion of the family assessment, if circumstances require that emergency custody be taken of one or more children in the family, the alleged abuser must be notified immediately that the response of the agency has changed from a family assessment to an investigation.

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All the requirements of an investigation are in effect and a new 45-day period begins in order to complete the investigation process. A new investigation referral must be entered into the automated data system and the existing family assessment must be closed.

### **5.0 Determine Risk Level Based on Family Needs Assessment**

Based on the information gathered during the Family Needs Assessment, the CPS worker must determine the likelihood of any occurrence or reoccurrence of abuse or neglect. The decision on risk of future harm should be based on the assessment of individual, family, and other risk factors. Any identified services for the family should be based on the needs identified in the Family Needs Assessment, which is documented in the automated information system.

The outcome of the Risk Assessment will influence the type and intensity of services to be provided. One of these outcomes must be documented in the automated data system.

- a. High Risk: The worker's assessment of risk related factors indicates a likelihood that the child is in jeopardy of abuse or neglect, and that intervention is necessary in order to protect one or more children in the family.
- b. Moderate Risk: The worker's assessment of risk related factors indicates that the child or other children are in possible jeopardy, but that a positive change in the situation is likely to occur with minimal intervention.
- c. Low Risk: The worker's assessment of risk related factors indicates that the situation can and will be changed, that no additional intervention is necessary and that the child or other children are at no reasonably assessable risk of abuse or neglect.

### **6.0 Supervisor Approval Required**

The CPS worker's supervisor must approve the Family Assessment in the automated data system. This approval means the supervisor has reviewed the Family Assessment to determine that all requirements have been met and that the Risk Assessment conclusion and rationale is appropriate.

### **7.0 Written and Oral Notification to Family to Summarize Family Needs Assessment**

The CPS worker must provide written and oral notification to the family that summarizes the family needs assessment, recommendations for services, and the length of time the family's name will remain in the CPS automated data system. It should outline the conclusions of the assessment and any services to be obtained by the family and/or



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provided to the family. If continuing services are needed, it should be clear who will do what and by when, and what outcome is expected.

### **8.0 Family Refuses Services**

If the family refuses recommended services, the reason for the refusal must also be included in the written notification to the family and in the automated data system.

The Family Service Agreement form in the Appendix can be photocopied and used to record the agreed upon actions by all parties or to note that these services were recommended but not agreed to by the family.

### **9.0 Notifications in Family Assessments**

**22VAC40-705-140(B)(5). No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.**

#### **9.1 Written Notification To Alleged Abuser or Neglector**

The written notification to the alleged abuser or neglecter of the completed family assessment must be in the form of a letter and a copy must be included in the case record. The written notification must include the outcome of the family assessment including what services if any were recommended, the length of time the family assessment will be retained, and the right to review information about him and/or herself in the record.

#### **9.2 Verbal Notification To Alleged Abuser or Neglector**

The verbal notification to the family members of the conclusions of the completed family assessment should explain what needs were identified, what services are available to meet the needs, and how long information on the family assessment will be maintained in the automated data system. The worker must document in the automated data system the date the verbal notification took place or the reason the verbal notification did not occur.

#### **9.3 Notification to the Complainant**

**22VAC40-705-140(D)(3). When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.**

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### **9.4 Notification to Military Personnel (Family Advocacy Program)**

The *Code of Virginia* § [63.2-1503](#)(N) establishes authority for the local department to share CPS information about completed family assessments with family advocacy representatives of the United States Armed Forces.

**22VAC40-720-20 A.** Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this chapter shall apply to instances where the alleged abuser or neglecter is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.

In completed family assessments *with services needed and* where the alleged abuser or neglecter is an active duty member of the United States Armed Forces or the spouse of a member residing in the member's household, the CPS worker shall provide information regarding the *family assessment and the recommended services based on risk* ~~category of abuse or neglect, recommended services and the identity of the abuser or neglecter~~ to the appropriate Family Advocacy Program within 30 days of the completion of the Family Assessment. See Part IX: Confidentiality for guidance about disclosure of other information disclosure to military Family Advocacy Programs.

#### **9.4.1 Written Notification To Alleged Abuser or Neglector That Family Advocacy Program has been Informed of Family Assessment**

The military member shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

### **G. Conduct Investigation**

**22VAC40-705-70(A).** When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall

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**include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any tape recordings of interviews.**

### **1.0 Mandated Contacts in Investigation**

Mandated contacts to conduct an investigation are similar to the mandated contacts to conduct a family assessment. There are additional requirements related to electronic recording of interviews of the alleged victim and alleged abuser/neglector. Local departments must follow these additional requirements.

#### **1.1 Document Mandated Contacts**

**22VAC40-705-80(B).** During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing why the specific contact or observation was not made.

The CPS worker must document the contacts required by regulation in the automated data system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the automated data system.

### **2.0 Face to Face Interview with the Alleged Victim Child Must Be *Electronically Recorded***

In 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that victim interviews in an investigation must be electronically recorded according to 22VAC40-705-80 or clearly document the specific and detailed reasons for not taping victim interviews as well as the documentation that the decision was made in consultation with a supervisor. A copy of this decision known as the West Decision is in the Appendix.

**22VAC40-705-80(B)(1).** The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child. All interviews with alleged victim children must be audio tape recorded ...

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The CPS worker must conduct at least one face to face interview with the alleged victim child. During the interview the CPS worker should inform the child about the investigation and what will occur during the investigation. The CPS worker should observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.

Some of this information may be obtained during the CPS worker's observation of victim interviews conducted by other members of the investigative team including, but not limited to, law enforcement officers, forensic nurses, or physicians. The CPS worker should review any *electronically recorded* victim interviews to determine if additional interviews are necessary to document the child's allegations to comply with CPS guidance.

### **2.1 Exceptions to Audio Taping Interviews with the Alleged Victim Child**

**22VAC40-705-80(B)(1) All interviews with alleged victim children must be audio tape-recorded except when the child protective services worker determines that:**

- a. The child's safety may be endangered by audio taping;**
- b. The age and/or developmental capacity of the child makes audio taping impractical;**
- c. A child refuses to participate in the interview if audio taping occurs; or**
- d. In the context of a team investigation with law enforcement personnel, the team or team leader determines that audio taping is not appropriate.**

The Virginia Administrative Code provides four exceptions to audio *or other electronic* recording of an interview with an alleged victim child. Before *electronically recording* an interview with a child, the CPS worker must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the four exceptions precluding audio taping the interview apply. Adequately considering the circumstances may include assessing the complaint or report; speaking with the parents or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The CPS worker shall consult with the supervisor when the decision is made not to *electronically* record an interview with an alleged victim child. The

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consultation and the specific reasons why *electronic recording* ~~taping~~ is not done in the specific investigation must be documented in the automated data system.

### **2.1.1 Exception: The Child's Safety May be Endangered by ~~Audio-Taping~~ *Electronic Recording***

If the child's safety is endangered or may be endangered by ~~audio~~ *electronically* recording the interview, then the interview must not be ~~audio~~ *electronically recorded*. The CPS worker may need to conduct a brief assessment of the child to determine the risk of any harm that may occur to the child as a result of ~~audio~~ *electronically* recording the interview. The CPS worker may be able to assess any potential harm to the child by speaking with the child's parents, guardians or collateral witnesses. If the interview is not ~~audio~~ *electronically* recorded, the CPS worker must carefully document the details of the interview in writing for the case record.

### **2.1.2 Exception: The Age or Developmental Capacity of the Child Makes ~~Audio~~ *Electronic Taping* Impractical**

The CPS worker must assess the mental and physical capacities of the child. The age or development of the child may preclude ~~audio~~ *electronically* taping the interview. It may be appropriate to ~~audio-tape~~ *electronically* record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses.

### **2.1.3 Exception: The Child Refuses to Participate in the Interview if ~~Audio~~ *Electronic Taping* Occurs**

The interview with the child should not be jeopardized because the child refuses to be ~~audio~~ *electronically recorded*. If the child refuses to be *electronically recorded* ~~audio-taped~~, the CPS worker should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an ~~audio~~ *electronically* taped interview, then the CPS worker must not *electronically record* ~~tape~~ the interview. The CPS worker must document the reasons why the child refused to be ~~audio~~ *electronically recorded* ~~taped~~.

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### **2.1.4 Exception: In the Context of a Team Investigation, the Team or Team Leader Determines that ~~Audio Electronic Recording Taping~~ is Not Appropriate**

If a complaint or report of abuse or neglect is being investigated in conjunction with a multidisciplinary team, then the multidisciplinary team should make the decision to ~~audio-tape electronically record~~ the interview with the alleged victim child based on the specific child and referral. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law-enforcement.

### **2.2 Each Interview With the Alleged Victim Child Must be ~~Audio Electronically Recorded Taped~~**

Each interview with the alleged victim child must be ~~audio electronically~~ recorded unless one of the above mentioned exceptions to ~~audio electronically~~ recording the interview applies. When an interview is not ~~taped electronically recorded~~ for any reason, the CPS worker must complete a detailed summary of the interview, including the reasons for not ~~taping recording~~ the interview and the supervisory consultation for this decision and enter the information into the automated case record.

### **2.3 Notify the Child's Parents or Caretakers that Interview was ~~Electronically Recorded Audio Taped~~**

While there is no provision in the *Code of Virginia* or the Virginia Administrative Code that requires a local department to inform the child's parents that the interview was ~~audio-electronically~~ recorded, the local department should notify the parents or guardians of the alleged victim child about the interview and that the interview was ~~electronically recorded audio-taped~~.

The local department should explain to the parents or guardians that the *Code of Virginia* allows the CPS worker to interview the alleged victim child without the consent of the parents and the Virginia Administrative Code requires the interview to be ~~electronically recorded audio-taped~~.<sup>5</sup>

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<sup>5</sup> VA Code § 63.2-1518 provides any person required to make a report of abuse or neglect with the authority to talk to a child suspected of being abused or neglected outside the presence of the child's parents, guardian, other person standing in loco parentis or school personnel. 22 VAC 40-705-80(B) requires that any interview by a CPS worker with an alleged victim child be audio taped recorded.

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### **2.4 Parents or Caretakers Object to *Electronically Recorded Audio-Recording***

There is no provision in the Virginia Administrative Code allowing an exception to ~~audio-taping~~ *electronic recording* when the parents or guardians object to the local department *electronic recording* ~~audio-taping~~ the interview of the alleged victim child. The CPS worker should explore the foundation for the parents' objection. The objection to the ~~audio-taping~~ *electronic recording* may satisfy one of the enumerated exceptions to ~~audio-taping~~ *electronic recording*.

### **2.5 Equipment Malfunction or Other Cause**

22VAC40-705-80(B)(1) provides that a CPS finding may be based on the written narrative should equipment failure or "other cause" occur. If an interview of an alleged victim child is not ~~audio-taped~~ *electronically recorded* because of equipment malfunction or other cause, then the CPS worker must write a detailed narrative of the interview and include that narrative in the record.

Equipment malfunction is self-explanatory. The Virginia Administrative Code does not define "other causes," providing the local department with some discretion and flexibility in those situations where discretion and flexibility is needed so that the CPS investigation is not compromised. For example, situations may occur where the alleged victim child spontaneously discloses details of the alleged abuse or neglect and the CPS worker does not have the recording equipment immediately available.

Another example: the CPS worker transports the child to a medical examination. In the car, the child discloses important information about the alleged abuse. The CPS worker was not able to record the child's statements. In such a situation, the CPS worker should clearly delineate or summarize the child's statements in the automated case record and the reasons why the child's statements were not recorded.

## **3.0 Interview With Child's Parents or Guardians**

**22 VAC 40-705-80(B)(3). The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.**

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The CPS worker must conduct a face to face interview with child's parents or guardians to obtain information about the child and about the parents' or guardians' knowledge of the allegations. The CPS worker should inform the parents or guardians about the investigative process and provide sufficient information to involve them in planning and support for the child.

### **4.0 Face to Face Interview with Alleged Abuser or Neglector**

**22VAC40-705-80(B)(2). The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.**

The CPS worker must conduct a face-to-face interview with the alleged abuser or neglector. The CPS worker must inform the alleged abuser or neglector of the allegations and the investigative process. The CPS worker must document the alleged abuser or neglector responses about the allegations. If the alleged abuser or neglector refuses to be interviewed, the CPS worker must inform the alleged abuser or neglector that the investigation must continue and a disposition will be made.

#### **4.1 Inform Alleged Abuser or Neglector of Right to ~~Tape~~ *Electronically* Record Interview**

**22VAC40-705-80(B)(2a.). The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to § [63.2-1516](#) of the Code of Virginia.**

##### **4.1.1 Law-Enforcement or Commonwealth's Attorney Objects to Informing the Alleged Abuser or Neglector of His Right to Audio Record the Interview**

A law-enforcement officer or the Commonwealth's Attorney may object to the local department informing the alleged perpetrator of his right to ~~audio~~ *electronically* record an interview. If a law-enforcement officer or a Commonwealth's Attorney objects, then the local department shall not advise the alleged perpetrator of that right. This objection applies when the Commonwealth's Attorney or the law-enforcement officer believes that the instruction will compromise the investigation of any criminal charges.

This objection must be documented in the automated data system.



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### **4.1.2 Local Department Must Provide ~~Tape~~ Recording Equipment**

**22VAC40-705-80(B)(2b.).** The local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

The CPS worker must be prepared to provide the equipment should the alleged abuser or neglecter elect to ~~audio tape~~ *electronically* record the interview. The local department must provide a copy of the ~~audio~~ taped interview to the alleged abuser or neglecter upon request.

### **4.2 Miranda Rights**

The *Code of Virginia* § [63.2-1503](#)(M) provides that statements made by the alleged abuser or neglecter to the investigating CPS worker after the alleged abuser or neglecter has been arrested are not admissible in any criminal proceedings unless the alleged abuser or neglecter was advised of his rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of his rights against self-incrimination or any subsequent statements made by the person cannot be used during the criminal proceedings. This section of the *Code of Virginia* only pertains to the admissibility in criminal proceedings of statements made by the alleged abuser or neglecter after that person has been arrested. This section of the *Code of Virginia* does not pertain to the use of any statements made by the alleged abuser or neglecter in determining whether the complaint or report is founded or unfounded. While certain statements made by the alleged abuser or neglecter may not be admissible in a court of law, there is no specific exclusion to the local department using those statements in determining a founded or unfounded disposition.

### **5.0 Face-to-Face Interview with Siblings**

The CPS worker shall interview or observe siblings of the alleged victim child in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

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### **6.0 Observe Environment Where Child Lives and Visit the Site Where the Alleged Abuse or Neglect Occurred**

**22VAC40-705-80(B)(4).** The child protective services worker shall observe the environment where the alleged victim child lives.

**22VAC40-705-80(B)(5).** The child protective services worker shall observe the site where the alleged incident took place.

### **7.0 Interview Collaterals**

**22VAC40-705-80(B)(6).** The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

**22VAC40-705-10:** "Collateral" means person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

The CPS worker must contact any collaterals perceived to have pertinent information. The CPS worker may involve collaterals to help ensure the safety of the child. Contact with the child's other caretakers, such as babysitters or day care providers, is encouraged. The CPS worker may make collateral contacts without the family's consent in order to complete an investigation, but consent and collaboration with the family is encouraged.

*The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.*

### **8.0 Other Contacts May Be Required**

The CPS worker may be required to contact other professionals depending on the type of CPS report. They include:

- Notify the local commonwealth attorney if a criminal act is alleged.
- Notify the medical examiner and the regional CPS program consultant if there is a child fatality,

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- Notify local law enforcement if there is an alleged criminal act and a joint response is needed.

### **9.0 Document Any Mandated Contacts Not Made**

When any mandated contact or observation is not made, the worker must document why the specific contact or observation did not occur in the automated data system.

### **10.0 Obtain Information to Complete the Investigation**

In developing the case record and the investigative narrative, the CPS worker must address and document in the automated data system these issues. Each investigation may have circumstances warranting more or less details and information.

#### **10.1 First Meaningful Contact**

The CPS worker must document the contacts required by regulation in the automated data system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the automated data system.

*The first meaningful contact in the investigation provides pertinent information relevant to the investigation and the safety of the child and is usually a face-to-face interview with the victim. There could be circumstances in an investigation that the first meaningful contact is with the alleged abuser or collateral. A first meaningful contact could be by telephone.*

The first meaningful contact must be documented as such in the automated data system. The CPS worker should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. ~~after the referral has been validated because response times will be calculated from this designation.~~

#### **10.2 Incident Information**

- a. Gather and document information about the alleged abuse or neglect incident, including the manner of infliction. If applicable, include the precipitating event (what was going on just prior to the occurrence of the abuse or neglect). If applicable, include a description of the environment where the alleged abuse occurred.

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- b. Describe the observable injury or condition of the child (or children) that suggests abuse or neglect has occurred or is likely to occur. Direct observation of the child is always necessary.
- c. Describe the frequency of the alleged abuse or neglect.
- d. Describe the medical and psychological treatment given as the result of the alleged abuse or neglect. Any written reports should be included in the case record and documented in the automated data system.

### **10.3 Child Information**

- a. Demographic information (date of birth, sex, grade in school, etc.)
- b. Child's developmental level
- c. Child's description of the incident including but not limited to:
  - (1) Child's statements about what happened. Include direct quotes of the child if appropriate.
  - (2) Child's statements about the impact of the incident on him. .
- d. Results of any tests or evaluation of the child's injury, behavior, or other characteristics.
- e. Prior history of abuse or neglect involving the child. The history of any prior abuse or neglect can be provided by any source.

### **10.4 Caretaker Information**

- a. Demographic information (date of birth, sex, grade in school, etc.)
- b. Caretaker's developmental level
- c. Caretaker's description of the incident including but not limited to:
  - (1) Statements about what happened. Include direct quotes of the child if appropriate.
  - (2) Caretaker acknowledgement of responsibility

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- (3) Caretaker's cooperation with the CPS Investigation
  - (4) Is the caretaker taking action to protect the child? If so, describe what action the caretaker is taking.
- d. Describe the observable or verifiable characteristics and behaviors of the caretaker impacting on the situation (both positive and negative). If drugs or alcohol are having an impact on the situation, this information should be documented in the automated data system. If available, include in the record any results of testing or evaluation.
- e. Caretaker's history of prior abuse or neglect as either victim or abuser.
- f. Caretaker's demonstration of a desire or willingness to change or to seek help if appropriate.
- g. Describe observations of the interaction between the caretaker (even when the caretaker is not a family member, if possible) and the child.

### **10.5 Family Information**

- a. Describe the family composition.
- b. Describe observable or verifiable characteristics and behaviors of the family that may impact child safety or risk of abuse or neglect.

### **10.6 Other Information**

- a. Observable or verifiable characteristics and behaviors of others who have access to the child and the nature of those relationships that may impact child safety or risk of abuse or neglect.
- b. Factors in the home environment that may impact child safety or risk of abuse or neglect (e.g. eviction, financial circumstances, domestic violence, support systems, etc.).
- c. Factors outside of the home environment that may impact child safety or risk of abuse or neglect (e.g. school, day care, other service agency contact, etc.).

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- d. Court actions that may impact child safety or risk of abuse or neglect.
- e. Supports for or obstacles and barriers to services that are needed to ensure the protection of the child or other children.

### **11.0 Dispositional Assessment**

**22VAC40-705-110(C). In investigations the child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.**

After collecting evidence and before expiration of the time frames for completing the investigation, the investigating social worker must determine the disposition. The Virginia Administrative Code provides the definition of disposition.

**22VAC40-705-10: "Disposition" means the determination of whether or not child abuse and/or neglect has occurred.**

#### **11.1 Multiple Dispositions and Types of Abuse or Neglect**

The *Code of Virginia* § [63.2-1505\(B5\)](#) requires that the CPS worker make a founded or unfounded disposition for each allegation in the investigation. For example, an investigation may show sufficient evidence that a child was physically abused and mentally abused. The CPS worker must make a disposition for each category of abuse or neglect. Each separate disposition of abuse or neglect must be supported by a preponderance of the evidence on its own accord.

It is possible that a category of abuse or neglect may have multiple types. For example, the evidence establishes that the child sustained a spiral fracture and internal injuries as a result of the caretaker's actions. The local department may render a founded disposition of physical abuse with the type of "bone fracture" and a founded disposition of physical abuse with the type of "internal injury."

#### **11.2 "Other Than Accidental Means"**

The injury or threat of injury to the child must have occurred as a result of "other than accidental means." The caretaker's actions must be carefully considered when determining whether the injury or threat of injury sustained by the child was caused accidentally.

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For example, the complaint alleged that the caretaker caused bruises and abrasions on the child's ankles and wrists. The caretaker asserted that he did not intend to cause the injuries to the child; he intended to restrain the five year old boy with a rope. However, the evidence shows that the caretaker tied the child's legs at the ankles and tied the wrists to a chair, and when the child jerked in several different directions for over 20 minutes to try to get loose, injuries occurred to these parts of the body. The caretaker did not accidentally tie the child and leave him for 20 minutes. Although the caretaker did not intend to cause the injuries to the child, the caretaker did intend to tie the child, and could reasonably expect this child would try to get loose. The caretaker's act of restraining this child with a rope was intended and could have caused more serious harm. The result of the caretaker's actions was not unforeseen or unexpected. Therefore, the injury was not accidental.

In the alternative, a black eye to the child's face while playing catch with the caretaker would be considered accidental. The fact that the ball bounced off the child's mitt and struck the child's eye was not intended. In the first example, the caretaker intended to discipline his child by restraining with a rope for 20 minutes. The intended act of restraining the child caused the injury to the child. In the second example, the caretaker did not intend for the ball to bounce off the child's mitt and hit the child's face. The action causing the black eye was accidental.

### **11.3 Incapacitated Caretaker**

Physical neglect includes when the caretaker is incapacitated to the extent that the caretaker is prevented or severely limited in performing child caring tasks. Incapacitation may include physical incapacitation or mental incapacitation. Mental or physical incapacitation, in and of itself, is not sufficient for a founded disposition. Incapacitation may include mental illness when the mental illness impairs the caretaker's ability to provide for the child's basic needs to the extent that the child's safety or health is jeopardized. Incapacitation may occur as a result of the caretaker's use of controlled substances to the extent that the caretaker is unable to perform child caring duties.

### **11.4 Unfounded Disposition**

The definition of an unfounded disposition as defined in the Virginia Administrative Code is:

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**22 VAC 40-705-10: "Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.**

However, an unfounded disposition may not mean that abuse or neglect did not occur, but rather that the evidence obtained during the investigation did not reach the preponderance level.

### **11.4.1 Risk Assessment for Unfounded Investigation Not Required**

The CPS worker may complete a risk assessment for an unfounded investigation if there appear to be service needs for the family to reduce the likelihood of abuse or neglect.

### **11.4.2 Notifications in Unfounded Investigations**

#### **a. Written Notification to Alleged Abuser or Neglector**

The alleged abuser or neglector must be notified in writing that the complaint was determined to be unfounded. A copy of the notification must be filed in the record and documented in the automated data system. The notification must include the length of time the CPS report will be retained in the automated data system; the individual's right to request the record be retained for an additional period; and the right to access information about himself in the investigative record.

Although verbal notification of an unfounded investigation is not required by regulation, CPS workers are encouraged to discuss the outcome of the investigation as well as any services the family may need or request.

**22VAC40-705-140(B)(1). When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local**



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**department retain the record for up to an additional two years.**

**b. Inform Alleged Abuser or Neglector of Legal Recourse if Complaint Is Malicious**

**22VAC40-705-140(B)(1)(b). The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in § [63.2-1514](#) of the Code of Virginia.**

In all unfounded complaints, the worker must inform the alleged abuser or neglector that he may petition the court to obtain the identity of the complainant if the alleged abuser believes the complaint was made in bad faith or maliciously.

The CPS worker may provide the alleged abuser or neglector with a copy of the *Code of Virginia* § [63.2-1514](#) pertaining to reports or complaints made in bad faith or maliciously. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously, as required by the *Code of Virginia* § [63.2-1514](#).

The CPS worker may also refer the person to seek legal advice or to the court if they have further questions.

**c. Alleged Abuser or Neglector May Request Retention of the Record**

**22VAC40-705 (A)6. The individual against whom unfounded allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.**

**d. Record Shall be Purged Upon Court Order**

**22VAC40-705-130(A)(7). The individual against whom allegations of abuse and/or neglect were made may request in writing that both the local department and the department shall immediately purge the record after a court rules that the report was made in bad faith or with**

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malicious intent pursuant to [§63.2-1514](#) of the Code of Virginia.

**e. Notify Alleged Abuser or Neglector in Unfounded Investigation Involving the Death of a Child**

**22VAC40-705-140(B)(1)(c).** When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to § 32.1-283.1(D) of the Code of Virginia.

**f. Notify Victim Child's Non Custodial Parent or Guardian**

**22VAC40-705-140(C)(1).** When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded, and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

Reasonable efforts must be made to notify the non-custodial parent of the alleged victim child when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child that should be taken into consideration. If notification does not occur for this or any reason, that reason should be documented in the automated data system. For siblings or other children residing in the home who are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of the local department. CPS workers should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

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### **g. Notify Complainant of Unfounded Disposition**

**22VAC40-705-140(D)(1).** When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

### **11.5 Founded Disposition**

The definition of a founded disposition as defined in the Virginia Administrative Code is:

**22 VAC 40-705-10: "Founded"** means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

#### **11.5.1 Preponderance of the Evidence**

The Virginia Administrative Code defines a preponderance of the evidence as:

**22VAC40-705-10: "Preponderance of evidence"** means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered and information provided.

#### **11.5.2 First Source Evidence**

First source evidence and indirect evidence are defined in the Virginia Administrative Code:

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**22VAC40-705-10: "First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.**

**"Indirect Evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.**

In no instance can a founded disposition be based solely on indirect evidence or an anonymous complaint.

### **a. First Source or Direct Evidence**

First source or direct evidence means evidence that proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. First source evidence includes the parties and witnesses to the alleged abuse or neglect. First source evidence also includes: witness depositions; police reports; photographs; medical, psychiatric and psychological reports; and any electronic recordings of interviews.

Direct evidence may include witnesses or documents. For example, first source evidence would include a witness who actually saw the alleged act or heard the words spoken. First source evidence would also include the examining physician's report establishing that the child sustained a spiral fracture.

### **b. Indirect Evidence**

*Indirect evidence, also known as circumstantial evidence, is evidence based on inference and not on personal knowledge or observation.<sup>6</sup> Indirect evidence relies upon inferences and presumptions to prove an issue in question and may require proving a chain of circumstances pointing to the existence or non-existence of certain facts.*

*There is no clear distinction between the reliability and credibility of first source evidence and indirect evidence. It remains incumbent upon the local department to weigh the credibility of all the evidence when*

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<sup>6</sup> Black's Law Dictionary 595, (8<sup>th</sup> ed. 2004).

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*determining a disposition. Indirect evidence may be used in support of a founded disposition; however, indirect evidence cannot be the sole basis for the disposition.*

### **11.6 Factors to Determine if Medical Neglect Definition Has Occurred ~~Been Met~~**

It is the parent's responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum, but rather, each case must be decided on its own particular facts.

The focus of the CPS response is whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

#### **11.6.1 Treatment or Care Must Be Necessary**

The statutory definition of medical neglect requires that the parent neglects or refuses to provide necessary care for the child's health. Therefore, the local department must establish that the caretaker's failure to follow through with a complete regimen of medical, mental or dental care for a child was necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays.

The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

#### **11.6.2 Assess Degree of Harm (Real or Threatened) to the Child**

When assessing whether the medical, mental or dental treatment is necessary for the child's health, the local department should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the local department should

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assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

In addition to harm, the local department should consider the type of medical, mental or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the local department may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the local department may give lesser deference to the caretaker's authority.

### **11.6.3 Parent Refuses Treatment for Life-Threatening Condition**

*Pursuant to the Code of Virginia § [63.2-100](#), under certain conditions a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care. Those conditions are:*

- The decision is made jointly by the parents or other person legally responsible for the child and the child;*
- The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment;*
- The parents or other person legally responsible for the child and the child have considered alternative treatment options; and*
- The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.*

**22VAC40-705-10: Particular Medical Treatment means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.**

***Sufficiently mature is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.***

***Informed opinion means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.***

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***Alternative treatment options means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.***

***Life-threatening condition means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.***

### **11.6.4 Assess Caretaker's Rationale**

The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances.

The local department should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The local department should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's affliction. The local department should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The local department should consider whether the caretakers sought an alternative treatment recommended by their physician and have not been totally rejected by all responsible medical authority.

### **11.6.5 Assess Financial Capabilities & Poverty**

The local department should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

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### **11.6.6 Failure to Thrive Must Be Diagnosed by a Physician**

The CPS worker must document that the diagnosis of failure to thrive was made by a physician and the diagnosis was nonorganic failure to thrive.

### **11.7 Child Under Alternative Treatment**

**22VAC40-705-30(C)(1). A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to §63.2-100 of the Code of Virginia, shall not for that reason alone be considered a neglected child.**

The *Code of Virginia* provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.<sup>7</sup> This exemption means that a founded disposition cannot be based only upon the religious practices of the parents or caretakers. A founded disposition can be rendered for other reasons. For example, if the parent caused the injury in the first place, the religious exemption would not apply. The religious exemption to a founded disposition of abuse or neglect is designed to protect a family's right to freedom of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.<sup>8</sup>

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the local department should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

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<sup>7</sup> See: Va. Code § 18.2-371.1(C). Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

<sup>8</sup> The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).



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### **11.8 Medical Neglect of Infants with Life-Threatening Conditions**

The Virginia Administrative Code 22 VAC 40-705-30(C) states that medical neglect includes withholding of medically indicated treatment. The Virginia Administrative Code defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the local department must be aware of the ancillary definitions and guidance requirements.

**22VAC40-705-10. “Withholding of medically indicated treatment” means the failure to respond to the infant’s life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician’s or physicians’ reasonable medical judgment will be most likely to be effective in ameliorating or correcting all such conditions.**

This definition applies to situations where parents do not attempt to get a diagnosis even when the child’s symptoms are severe and observable.

#### **11.8.1 Withholding Medically Indicated Treatment When Treatment is Futile**

**22VAC40-705-30(C)(2): For the purposes of this regulation, “withholding of medically indicated treatment” does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician’s or physicians’ reasonable medical judgment:**

- a. The infant is chronically and irreversibly comatose;**
- b. The infant has a terminal condition and the provision of such treatment would:**
  - (1) Merely prolong dying;**
  - (2) Not be effective in ameliorating or correcting all of the infant’s life-threatening conditions; or**
  - (3) Otherwise be futile in terms of the survival of the infant; or**
  - (4) The infant has a terminal condition and the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.**

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### **11.8.2 Definitions of Chronically and Irreversibly Comatose & Terminal Condition**

**22VAC40-705-10: “Chronically and irreversibly comatose”** means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

**22VAC40-705-10: “Terminal condition”** means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient’s death is imminent or (ii) the patient is chronically and irreversibly comatose.

### **11.9 Founded Disposition Cannot be Based Solely on Anonymous Complaint**

A founded disposition cannot be based solely on an anonymous complaint. An allegation of abuse or neglect, in and of itself, cannot prove that the alleged act or omission did or did not occur. Because a person alleges that an act occurred does not mean that the act in fact did occur. The allegation must be proved or disproved by corroborating evidence.

### **11.10 Alleged Abuser Shall Have an Opportunity for Consultation Prior to a Founded Disposition**

**22VAC40-705-120D.** When completing an investigation, prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide an opportunity for the alleged abuser and/or neglecter to have a local consultation with the local director or his designee to hear and refute the evidence supporting a founded disposition. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, sharing the evidence prior to the court hearing is prohibited.

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The alleged abuser may be informed at any time during the investigation that the facts are leading the worker toward making a founded disposition. The informing can be informal and oral, but the fact that the informing took place through a contact with the alleged abuser must be documented in the automated data system.

If the alleged abuser/neglector requests to present additional evidence or refute evidence, the local department shall afford this opportunity and consider such additional information prior to rendering the disposition. The investigation may be extended from 45 days to 60 days for this process to be completed.

The requirement for a consultation prior to disposition does not apply if there are pending criminal charges involving the same victim child.

### **11.11 Polygraph Examinations are Not Considered Reliable Evidence**

Polygraph examinations are not admissible as evidence in CPS administrative hearings and cannot be considered as evidence when a local department is making a disposition. Since the Virginia Supreme Court has repeatedly ruled that polygraph examinations are scientifically unreliable, a local department cannot allow polygraph examinations to be entered in as evidence in support of a founded disposition.<sup>9</sup>

### **11.12 Founded Disposition & Identity of Abuser is Unknown**

It is possible that an investigation reveals a preponderance of evidence establishing that the child was physically abused or physically neglected, but fails to establish, by a preponderance of that evidence, the caretaker responsible for the abuse or neglect. If, after diligent efforts to identify the abuser, the identity of the abuser remains unknown, the local department may enter the abuser's name as "unknown" into the automated data system.

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<sup>9</sup> In *Robinson v. Commonwealth*, 231 Va. 142, 341 S.E.2d 159 (1986), the Virginia Supreme Court stated, "[I]n a long line of cases, spanning almost thirty years, we have made clear that polygraph examinations are so thoroughly unreliable as to be of no proper evidentiary use whether they favor the accused, implicate the accused, or are agreed upon to by both parties." Virginia courts have not specifically addressed the use of polygraphs in administrative hearings. However, in light of the courts' strong opposition to using results of polygraph testing in evidence, we see no principled distinction between the use of a polygraph in court and use in an administrative hearing. In *Dept. of Public Safety v. Scruggs*, 79 Md. App. 312, 556 A.2d 736 (1989), the court acknowledged that administrative agencies are not bound by the strict rules of evidence, but stated that such evidence must be competent. The court found polygraph evidence so unreliable as to deem it "incompetent" evidence. The Supreme Court relied on *Robinson* in 2004 in *Elliott v. Commonwealth*, 267 Va. 396, 593 S.E.2d 270 (2004).

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For example, the evidence establishes that the infant was shaken and sustained severe injuries. The only persons with the opportunity to have caused the injuries were the parents of the infant and the babysitter who provided care for the infant on the night the injuries occurred. However, the evidence is conflicting concerning who actually caused the injuries. In such a situation, the local department may render a founded disposition of physical abuse with the identity of the abuser unknown.

### **a. Abuser Identified After Disposition**

If new information is received subsequent to a disposition of Founded with Unknown Abuser, this information is to be treated as a new referral and requires a new investigation. If the original information is still pertinent and relevant and there is sufficient reason not to re-interview all the required contacts, such as potential trauma to the child, the information from original interviews may be incorporated into the new investigation. If this additional information allows for a founded disposition with a known abuser, it does not replace the original finding.

## **12.0 Determine Level of Founded Disposition**

A founded disposition must be categorized into one of three levels. Categorization is dependent on the nature of the act and the seriousness of the harm or threatened harm to the child as a result of maltreatment. In all founded cases, there may be circumstances influencing the severity of the abusive or neglectful incident. The circumstances may increase or decrease the severity of harm or threatened harm.

The level for a founded disposition must be supported by a preponderance of the evidence. The evidence supporting the level must be documented in the record. The facts supporting the level will relate to the type and pattern of abuse/neglect, the vulnerability of the child, the effect or potential effect of the abuse/neglect and the action or inaction of the caretaker.

### **12.1 Level 1**

**22VAC40-700-20(1): Level 1. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.**

Injuries or conditions that resulted in or were likely to have resulted in serious harm include but are not limited to:

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- a. For physical abuse, the situation requires medical attention in order to be remediated; the injury may be to the head, face, genitals, or is internal and located near a vital organ; injuries located in more than one place; the injuries were caused by the use of an instrument such as a tool or weapon; an inappropriate drug was administered or a drug was given in an inappropriate dosage; *child exposed to the production or sale of methamphetamine or other drug and is not able to self-protect.*
- b. For neglect situations, the condition would be one where the child's minimal needs are rarely met for food, clothing, shelter, supervision, or medical care; the child is frequently unsupervised or unprotected; the child is left by the caretaker with no plan for the child's care or no information about the caretaker's whereabouts or time for return; or a young child is left alone for any period of time.
- c. For mental abuse or neglect, the child has engaged in self-destructive behavior, or has required psychiatric hospitalization, or required treatment for severe dysfunction or for presenting a danger to self or others, or for problems related to the caretaker behavior.
- d. For sexual abuse, the situation would be one where there was genital contact, or force or threat was used, or the abuse had taken place over a period of time and there were multiple incidents.
- e. For medical neglect, caretaker failed to provide medical care in a life threatening situation or a situation that could reasonably be expected to result in a chronic debilitating condition.
- f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to b & c above.

### **12.2 Level 2**

**22VAC40-700-20(2) : Level 2. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.**

Injuries or conditions that resulted in or were likely to have resulted in moderate harm include but are not limited to:

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- a. For physical abuse, the injury necessitates some form of minor medical attention; injury on torso, arms, or hidden place (such as arm pits); use of tool that is associated with discipline such as a switch or paddle, *exposure to the production or sale of methamphetamine or other drugs and the child may not be able to self protect.*
- b. For neglect situations, the condition would be one where the child's minimal needs are sporadically met for food, clothing, shelter, supervision, or medical care; or a pattern or one-time incident related to lack of supervision caused or could have caused moderate harm.
- c. For mental abuse or neglect, the situation would be one where the child's emotional needs are rarely met; the child's behavior is problematic at home or school;
- d. For sexual abuse, minimal or no physical touching but exposure to masturbation, exhibitionism, etc. Caretaker makes repeated sexually provocative comments to the child; child is exposed to pornographic materials.
- e. For medical neglect, the situation is one in which a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; the child's condition is not acute or life threatening but could be detrimental to the child's mental or physical health.
- f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to b & c above.

### **12.3 Level 3**

**22VAC40-700-20(3): Level 3. This level includes those injuries/conditions, real or threatened, that result in minimal harm to a child.**

Injuries or conditions that resulted in or were likely to have resulted in minimal harm include but are not limited to:

- a. For physical abuse, the situation requires no medical attention for injury, *including minimal exposure to the production or sale of methamphetamine or other drugs.*

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- b. In physical neglect, child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; supervision marginal, poses threat of danger to child;
- c. For mental abuse or neglect, the situation would be one where the child's emotional needs are met sporadically with evidence of some negative impact on the child's behavior;
- d. For sexual abuse, there was no or minimal physical touching or exposure to sexual acts such as masturbation, exhibitionism, etc. Caretaker's actions or behavior, such as making sexually suggestive comments to the child, causes or creates a threat of minimal harm to the child.
- e. For medical neglect, the situation may be one in which the child's life is not in danger, the child is not experiencing discomfort at this time, but the medical authority reports medical treatment is needed to avoid illness or developmental delay.
- f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, refer to b & c above.

### **13.0 Determine Risk Level in Founded Investigations**

**22VAC40-705-110(B). In all founded cases and in completed family assessments, the child protective services worker shall make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not intervention is necessary to protect the child.**

If the local department makes a founded disposition of abuse or neglect, then the local department must complete the third type of assessment, the risk assessment.

The risk assessment identifies families that have low, moderate or high probabilities of future abuse or neglect. A risk assessment is the CPS worker's appraisal of the likelihood that without intervention a family will maltreat their children again. Risk assessment does not predict recurrence, but can assess whether a family is more or less likely to have another incident without intervention by the local department.

The risk level guides the local department's decision whether or not to open a case to ongoing services and the intensity of those services.

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Risk of harm to the child may be visualized as a continuum ranging from low through high risk. The evidence may show that the abusive or neglectful event was a one-time occurrence with no discernible risk of repeating in the future. In the alternative, the evidence may show the risk of the child being abused or neglected in the future to be significant or high.

The evidence gathered during the investigation, an analysis of its reliability and importance, and an evaluation of how the various risk factors interrelate determines the level of risk to the child. It is critical that assessments regarding the degree to which the child is at risk continue to be made throughout the period of interaction with the family.

The questions listed below relate directly to the facts collected during the investigation. The risk assessment results from the synthesis of the answers to the questions. The risk assessment must take into consideration each of the identified factors and any other special circumstances that might influence the foreseeable risk of harm.

### **13.1 Elements of Risk Assessment**

#### **a. Incident**

When evaluating the incident, the essential consideration is the degree of harm to the child, including:

- a. How severe is the injury?
- b. Is the potential danger more or less severe because of the manner of infliction?
- c. Is the potential danger more or less severe because of a pattern of abuse or neglect?
- d. Is the precipitating event (or one very similar) likely to reoccur?

#### **b. Child**

The local department must evaluate the physical and mental vulnerability of the child. When evaluating the vulnerability of the child, questions to consider include:

- a. Does the child's age, sex, developmental level, behavior, medical or physical conditions affect his or her vulnerability to abuse or neglect?



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- b. Is the child able to protect him or herself from future abuse or neglect?
- c. Are the child's responses and feelings consistent or inconsistent with what would be expected considering the circumstances of the CPS report?
- d. How does the child view his or her role in the abusive or neglectful situation? How does that impact on his or her vulnerability for abuse or neglect?

### **c. Caretaker**

The local department must evaluate the caretaker's ability and willingness in preventing future abuse or neglect. Caretaker refers to both the abusing and non-abusing parent. When evaluating the caretaker's willingness or ability to prevent future abuse or neglect, questions to consider include:

- a. Do the caretakers demonstrate the ability to stop the abuse or neglect?
- b. Has the abuse or neglect stopped or diminished?
- c. What plans do the caretakers have for the future or continued protection of the child?
- d. How do the caretakers' views of the child impact their ability to protect the child?
- e. What impact do the following issues have on the caretaker's ability to care for the child: mental health, substance or drug abuse, domestic violence, prior history of abuse or neglect; prior/current involvement with criminal justice system; physical or mental disability;

### **d. Family**

Key considerations are the ability and willingness of the family to provide a safe home and protect the child. When evaluating the family's willingness or ability to prevent future abuse or neglect, questions to consider include:

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- a. How do the dynamics, communication, roles, and responsibilities of the family members increase or decrease the potential for abuse or neglect to the child?
- b. In what way do the family's characteristics and behaviors impact on their ability to provide a safe home for the child?
- c. How does the family's view of the child impact their ability to provide a safe home and protect the child?
- e. Other**
  - a. How do the characteristics and behaviors of others who have access to the child impact the potential for abuse or neglect of the child?
  - b. How do the factors in the environment (both in and outside the home) impact the potential for abuse and neglect of the child?
  - c. How does the intervention of the judicial system impact the potential for abuse or neglect of the child?
  - d. How do the obstacles or barriers to services that are needed impact the potential for abuse or neglect of the child or other children?
  - e. What impact has this CPS intervention or prior CPS intervention had on potential abuse or neglect of the child?

### **13.2 Determine the Risk Level for Founded Investigation**

The risk assessment must be categorized into one of the following three levels and documented in the automated data system:

- a. High Risk

The worker's assessment of risk related factors indicates a likelihood that the child is in jeopardy of abuse or neglect, and that intervention is necessary in order to protect the child or other children.

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### **b. Moderate Risk**

The worker's assessment of risk related factors indicates that the child or other children are in possible jeopardy, but that a positive change in the situation is likely to occur with minimal intervention.

### **c. Low Risk**

The worker's assessment of risk related factors indicates that the situation can and will be changed, that no additional intervention is necessary, and that the child or other children are at no reasonably assessable risk of abuse or neglect.

## **14.0 Cannot Reopen a Closed Investigation**

There is no basis in the *Code of Virginia* or the Virginia Administrative Code for “reopening” a closed investigation. When new or additional information is received after a complaint has been determined to be Unfounded, the new/additional information may be sufficient to meet the validity criteria for a new CPS report. If the new information adds nothing more to the original complaint, the report should be screened out.

## **15.0 Notifications in Founded Investigations**

### **15.1 Notify Abuser or Neglector in Writing**

The written notification to the abuser or neglector of the founded disposition(s) must be in a letter and a copy must be included in the case record. The letter must include:

- A clear statement that the individual is the abuser and/or neglector; and
- The category of abuse and/or neglect; and
- The disposition, level and retention time, including statement about effect of multiple complaints on retention; and
- The name of the victim child or children; and
- A statement informing the abuser of his/her right to appeal the finding and to have access to the case record and
- *A statement informing the abuser that pursuant to § 63.2-1505 of the Code of Virginia, if the abuser is a teacher in a public school division in Virginia, the local school board shall be notified of the founded disposition.*

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Local departments are encouraged to send the disposition letter by certified mail as further documentation of the notification to the abuser or neglector.

### **15.2 Inform Abuser or Neglector of Appeal Rights**

The abuser or neglector must be informed of his right to appeal the founded disposition. This must be done verbally and in writing as soon as the disposition is reached. In addition, the abuser or neglector must be given a brochure, "Child Protective Services Appeals and Fair Hearings" that outlines the administrative appeal process. The local department must document in the automated data system that the abuser or neglector was given the appeal brochure and was informed verbally of his/her appeal rights.

### **15.3 Notify Abuser or Neglector Verbally**

The verbal notification to the abuser or neglector of the founded disposition(s) should include the disposition, level and retention time, including effect of multiple complaints on retention and inform the abuser of his/her right to appeal to finding and to have access to the case record. The worker must document in the automated data system, the date the verbal notification took place. If the verbal notification did not occur, the CPS worker should document the reasons in the automated data system.

### **15.4 Foster Parent is Abuser or Neglector of the Victim Child in Founded Complaint**

**22VAC40-705-140(B)(4). When the abuser and/or neglector in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.**

### **15.5 Notify All Parties if Identity of Abuser or Neglector is Unknown**

If the local department renders a founded disposition with the abuser unknown, the local department must notify all parties, including the parents or guardian of the child, the alleged abuser or neglector and the complainant. All parties must be informed that the investigation resulted in a finding that the child was abused or neglected, but the evidence did not establish the identity of the perpetrator.

The alleged abuser or neglector should be notified that a finding of abuse or neglect was not made against that person. Because the abuser or neglector

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is unknown, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary action was taken.

### **15.6 Notify All Parties if Abuser or Neglector is Deceased**

If the alleged abuser or neglector is deceased at the time of the report or dies during the course of the investigation, the local department must evaluate whether the purpose of the investigation would be achieved. An investigation may be appropriate if there is a child victim in need of services or in order to prevent other abuse or neglect.

If the local department renders a founded disposition and the named abuser or neglector is deceased, the local department must notify all parties, including the deceased abuser or neglector's estate. The notification letter must state that the identity of the alleged abuser or neglector will be referred to as "deceased" in the automated data system. Because the abuser or neglector is deceased, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary actions were taken.

### **15.7 Notify Victim Child's Non Custodial Parent or Guardian**

**22VAC40-705-140(C)(2). When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.**

Reasonable efforts must be made to notify the non-custodial parent of the alleged victim child when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child that should be taken into consideration. If notification does not occur for this or any reason, that reason should be documented in the automated data system. For siblings or other children residing in the home who are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of

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the local department. CPS workers should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

### **15.8 Notify Complainant**

**22VAC40-705-140(D)(2).** When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

### **15.9 Notify Military Personnel (Family Advocacy Program)**

The *Code of Virginia* § [63.2-1503](#)(N) establishes authority for the local department to share CPS information with family advocacy representatives of the United States Armed Forces.

**22VAC40-705-140(E).** Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22 VAC 40-720-20.

In founded complaints where a need for protective services is identified in which the abuser or neglecter is an active duty member of the United States Armed Forces, or the spouse of a member residing in the member's household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglecter shall be reported to the appropriate Family Advocacy Program representative at the time of the disposition. See Part IX: Confidentiality of this manual for guidance on other information disclosure to Family Advocacy.

#### **a. Written Notification To Family Advocacy Must be Made Within 30 Days of Founded Disposition**

The Family Advocacy Program representative must also be notified in writing within 30 days after all administrative appeal rights of the abuser or neglecter have been exhausted or forfeited.

#### **b. Written Notification to Abuser or Neglector**

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The abuser or neglector shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program.

### **15.10 Referral To Early Intervention Programs For Children Under Age Three In Founded Investigations**

The CPS worker is required to refer a child under the age of three in a founded investigation for early intervention services. All localities are served by an Infant & Toddler Connection of Virginia program. This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

In Virginia, the eligible population is Infants and toddlers from birth to age three who are developmentally delayed, who have atypical development, or who have a diagnosed physical or mental condition that has a high probability of resulting in delay.

Local departments are encouraged to meet with the local Infant and Toddler program to learn about any referral issues that should be explained to the parent. Local departments are also encouraged to develop procedures with the Infant & Toddler Connection of Virginia program to make referrals of children under age three in founded investigations who may be eligible for these services. Recommended elements of these procedures could include:

- Within five (5) working days of completing the investigation the local department of social services will send a referral to the local Part C Early Intervention program using the local referral form.
- The local department will send a copy of the referral to the family with the notice of disposition. The parent shall also be informed verbally of the referral and have an opportunity to discuss the referral process.
- The local department will request the family to sign a release form allowing the exchange of information between the Infant-Toddler Connection Program and the local department regarding the referral.

More information on the Infant & Toddler programs in Virginia can be found at [www.infantva.org](http://www.infantva.org), and in the joint Memorandum of Understanding issued by the Commissioners of the Department of Social Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services dated January 11, 2005 and included in the Appendix.

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### **15.11 Notify Parents of a Minor Who is an Abuser**

*When a child under the age of eighteen is the abuser in a founded investigation, the local department shall inform the parents and/or legal guardian of the minor of the finding and the abuser's right to appeal the finding. The minor's parents/legal guardian have the authority to initiate an administrative appeal of the founded disposition on behalf of the minor.*

### **15.12 Notify Local School Board When Abuser is a Teacher**

*Pursuant to § 63.2-1505 of the Code of Virginia, if the abuser is a full-time, part-time, permanent, or temporary teacher in a school division located within the Commonwealth, the local department shall notify the local school board of the founded disposition made after July 1, 2008 at the same time the subject is notified of the founded disposition. This includes in home investigations when the teacher is the subject of the founded investigation involving his own children. Any information exchanged for the purposes of this subsection shall not be considered a violation of § 63.2-102, 63.2-104 or 63.2-105.*

*The local department may send a copy of the disposition letter to the subject of the complaint to the local school board to meet this notification requirement.*

*This notification requirement applies only to teachers who are employed by a local school board at the time of the disposition of the complaint. The notification requirement does not apply to other local school board employees.*

### **15.13 Notify State Superintendent of Public Instruction When Abuser Holds a License Issued by the Board of Education**

*Pursuant to § 63.2-1503 P of the Code of Virginia, the local department shall notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education and after all rights to any appeal provided by § 63.2-1526 have been exhausted up to and including appeals to the circuit court.. Any information exchanged for the purpose of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.*



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*The Board Education issues licenses to instructional personnel including teachers and other professionals and administrators. For a complete list, refer to Licensure Regulations for School Personnel at <http://www.doe.virginia.gov/VDOE/Compliance/TeacherED/nulicvr.pdf>*

*The Board of Education does not license teacher aides, janitorial staff, and support administrative staff.*

*This notification requirement applies to all individuals holding a license even if that person is not currently employed by a local school board.*

### **16.0 Investigation of Medical Neglect of Disabled Infants with Life-Threatening Conditions**

After receiving a complaint or report involving the withholding of medical treatment of an infant, the local department should initiate contact with the designated person in the hospital. The local department should arrange with the local hospital for naming a contact person or liaison. The local department may contact the CPS State Hotline because the hospital's contact name is available from the CPS State Hotline and the list is updated annually. Upon receipt of the complaint or report, the CPS worker should immediately:

- a. Verify the child's presence at the hospital by contacting the hospital's liaison;
- b. Verify the child's status.

#### **16.1 Contact Physician or Hospital Staff**

The local department should arrange to meet with the attending physician or the Infant Care Review Panel and conduct a visit to the hospital to verify the child's situation.

#### **16.2 Determine Who is Responsible for the Child**

The CPS worker should make a site visit and determine who is responsible for the child. This will usually be the child's parents, unless the parents have abdicated their authority. Situations when the parents are not responsible include, but are not limited to:

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- a. When parents permanently voluntarily entrust the child to an agency;
- b. When a third trimester abortion results in a live birth.<sup>10</sup>

### **16.3 Seeking Court Assistance**

When treatment appears necessary and the Court is available to act on a petition the worker can:

- a. Petition the Court for custody so that treatment can be provided;
- b. Petition the Court for a Protective Order specifying that treatment be provided.

When emergency treatment is necessary and the Court is unavailable, the worker should consider taking the child into custody pursuant to *The Code of Virginia* [§63.2-1517](#).

## **H. Family Assessment And Investigation Case Record**

All family assessments or investigations must be documented in the automated data system. The CPS worker will collect information from a variety of sources in conducting a family assessment or investigation.

### **1.0 All Family Assessments and Investigations Must be Documented in the Automated Data System**

**22VAC40-705-10: "Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.**

Thorough and detailed documentation of the family assessment or investigation is essential to determine and support the decisions made by the CPS worker and approved by the supervisor. All family assessment and investigation records must contain the information required by law, regulation and guidance.

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<sup>10</sup> § 18.2-74 of the Code of Virginia provides that in any termination of human pregnancy aided or assisted by a licensed physician subsequent to the second trimester, measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability. The physician would be responsible for providing that the life sustaining measures were provided in these instances. For the text of § 18.2-74 of the Code of Virginia, please see Appendix B.

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### **2.0 Case Record**

**22VAC40-705-10: "Case Record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.**

### **3.0 Family Assessment or Investigation Documentation**

**22VAC40-705-10: "Investigative narrative" means the written account of the investigation contained in the child protective services case record.**

The family assessment or investigative narrative is a detailed written summary of all the evidence supporting the local department's investigation disposition or information supporting the family assessment. All documentation must be entered into the automated data system.

A hard copy file, in addition to the automated data system generated reports, for each family assessment or investigation may be needed to include correspondence, reports from other sources (school, medical, etc.) and other documentation germane to the family assessment or investigation.

### **4.0 Supervisory Review**

All completed family assessments and investigations must be reviewed and approved in the automated data system by the CPS worker and the CPS worker's supervisor within 5 working days.

#### **I. CPS Automated Data System**

CPS reports including screened out reports, investigations and family assessments, must be maintained in an automated data system.

**22VAC40-705-10: "Child Abuse and Neglect Information System" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with non-identifying information; the Central Registry of founded complaints not on appeal; and a data base that can be accessed only by the Department and local departments that contains all non-purged CPS reports.**

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### **1.0 Central Registry**

The *Code of Virginia* § [63.2-1515](#) establishes authority for the central registry and governs disclosure of information from the central registry.

**22VAC40-705-10: "Central Registry" means a subset of the child abuse and neglect information system, and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the Department.**

### **2.0 CPS Database Available to Local Departments**

**22VAC40-705-130(A)(1). The Department shall retain unfounded complaints and/or reports in the child abuse and neglect information system to provide local departments with information regarding prior investigations.**

**22VAC40-705-130(A)(2). This record shall be kept separate from the Central Registry and accessible only to the Department and to local departments.**

In addition to CPS reports contained in the Central Registry, the automated data system contains a data base of all non-purged CPS reports that can only be accessed by local departments. This data base contains all pending CPS investigations and family assessments as well as completed family assessments, unfounded investigations, and screened out reports.

### **3.0 Retain Record if Subsequent Complaints Arise**

**22VAC40-705-130(A)(5). If the individual against whom allegations of abuse and/or neglect were made or if the same child is involved in subsequent complaints and/or reports, the information from all complaints and/or reports shall be maintained until the last purge date has been reached.**

### **4.0. Retention Period for Family Assessment**

**22VAC40-705(A)4. The record of the family assessment shall be purged three years after the date of the complaint or report if there are no subsequent complaints and/or reports regarding the individual against whom allegations**

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of abuse and/or neglect were made or regarding the same child in those three years.

### **5.0 Retention Period for investigation with Unfounded Disposition**

**22VAC40-705-130(A).** Pursuant to § [63.2-1514](#) of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system when disposition is made.

#### **5.1 Purge Unfounded Disposition After One Year**

**22VAC40-705-130(A)(3).** The record of the unfounded case or family assessment shall be purged one year after the date of the complaint or report if there are no subsequent founded or unfounded complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in that one year.

### **6.0. Retention Period for Investigation with Founded Disposition**

**22VAC40-705-130(B).** The local department shall report all founded case dispositions to the child abuse and neglect information system for inclusion in the Central Registry pursuant to subdivision 5 of § [63.2-1515](#) of the Code of Virginia and 22VAC40-700-30. Identifying information about the abuser and/or neglecter and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to the regulation dealing with retention in the Central Registry, 22VAC40-700-30.

Pursuant to 22VAC40-700-30, names will be retained in the central registry for:

- a. Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.
- b. Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.

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- c. Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.**
- d. If an individual is involved in multiple complaints, the information from all founded complaints will be maintained until the last deletion date has been reached.**

### **7.0 Retention Period for Reports Involving a Child Death**

The record of a child fatality report, whether screened out, founded or unfounded, should be maintained until the State Child Fatality Review Team has had an opportunity to review it. The *Code of Virginia* § [32.1-283.1\(D\)](#) requires the local department to maintain these CPS records beyond the usual retention periods for CPS records. Contact the regional consultant if there is any question about retention of a specific record.

### **8.0 CPS Statistical Information**

The automated data system provides non-identifying statistical information about the CPS program.

### **J. CPS Central Registry Searches**

It is the responsibility of the Department to maintain an automated data system for CPS and to respond to requests for searches of the Central Registry. Many organizations that work with children require a search of the Central Registry as a condition of employment. In addition, The *Code of Virginia* § [63.2-1515](#) requires the Department to respond to requests to search the Central Registry for employment by local departments and local school boards.

#### **1.0 Individual Whose Name is Being Searched Must Authorize the Central Registry Search**

**22VAC40-705-170(A).** The department will complete a search of the Central Registry upon request by a local department, upon receipt of a notarized signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

#### **2.0 Name is Found in Central Registry**

**22VAC40-705-170(B).** When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.

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### **2.1 Local Department Cannot Verify that Client was Notified of Appeal Rights**

If the local department cannot produce documentation that the client was notified of his appeal rights, the local department must review the case file. The local department must determine whether to retain or amend the founded disposition or to purge the complaint based on the documentation in the case record. The local department may consult the CPS Regional Specialist for assistance.

The local department must review the case record and notify the Central Registry Search Unit within five working days.

### **2.2 Written Notification to Abuser or Neglector of Disposition and Appeal Rights**

If the local department cannot verify that the client was informed of his appeal rights and the local department determines that the founded disposition shall be maintained, the local department must inform the client of his right to appeal the founded disposition of abuse or neglect.

## **3.0 Notification of Central Registry Search Results**

The Department will return the completed search form to the authorized agent named on the search request. If the individual's name is in the Central Registry, the Department will also send a copy of this form to the individual whose name was searched and to the local department responsible for the name being entered into the Central Registry.

### **3.1 Local Department Must Release Information to Abuser or Neglector Upon Request**

If the individual contacts the local department regarding his name entry into the Central Registry, the local department shall provide the individual with the requested information and provide a copy of the appeal procedures to the individual.

### **3.2 Abuser or Neglector May Request Appeal**

If the individual decides to appeal the founded disposition or dispositions, then the local department must respond to the request for a local conference.